

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION**

UNITED STATES OF AMERICA

CRIMINAL ACTION NO. 15-0133

VS.

JUDGE TERRY A. DOUGHTY

DION PAUL BARNES

MAG. JUDGE KAREN L. HAYES

MEMORANDUM ORDER

Before the Court is a “Motion to Set Aside, Modify, And/Or Correct Sentence,” [doc # 212], filed by Defendant Dion Paul Barnes on approximately September 16, 2019, under 28 U.S.C. § 2255.

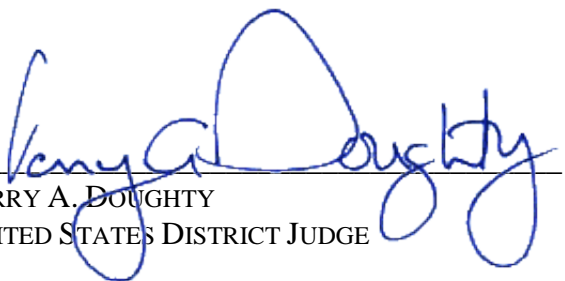
“A 1-year period of limitation shall apply to a motion under” Section 2255. 28 U.S.C. § 2255(f). Relevant here, “the limitation period shall run from the latest of--(1) the date on which the judgment of conviction becomes final[.]” *Id.*

“The one-year limitations period of the AEDPA is a statute of limitations that is not jurisdictional and is therefore subject to equitable tolling.” *United States v. Wynn*, 292 F.3d 226, 230 (5th Cir. 2002). “Equitable tolling is permissible only in ‘rare and exceptional circumstances.’” *Id.* (quoting *Davis v. Johnson*, 158 F.3d 806, 811 (5th Cir. 1998)). It “applies principally where the plaintiff is actively misled by the defendant about the cause of action or is prevented in some extraordinary way from asserting his rights.” *Coleman v. Johnson*, 184 F.3d 398, 402 (5th Cir. 1999) (internal quotation marks and citation omitted). “[T]he principles of equitable tolling . . . do not extend to what is at best a garden variety claim of excusable neglect.” *Irwin v. Department of Veterans Affairs*, 498 U.S. 89, 96 (1990). “Unfamiliarity with the legal process does not justify equitable tolling.” *United States v. Kirkham*, 367 F. App'x 539, 541 (5th Cir. 2010).

Here, to determine whether the United States is required to respond,¹ Defendant should, to the best of his ability and resources, supplement and address whether the instant motion is timely. If Defendant contends that the one-year period of limitation should be equitably tolled, he should identify and describe the rare and exceptional circumstances on which he bases his contention.

Accordingly, **IT IS ORDERED** that Defendant Dion Paul Barnes shall, within **thirty (30) days** from the date of this Memorandum Order, file a supplement to the instant motion, addressing whether the motion is timely and whether the Court should equitably toll the period of limitation.

MONROE, LOUISIANA, this 7th day of October, 2019.



TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

¹ See RULE 4, RULES GOVERNING § 2255 PROCEEDINGS.